United Nations A/HRC/37/NGO/146

General Assembly

Distr.: General
15 February 2018

English only

Human Rights Council
Thirty-seventh session
26 February-23 March 2018
Agenda item 4
Human rights situations that require the Council's attention

Joint written statement* submitted by the International Organization for the Elimination of All Forms of Racial Discrimination, a non-governmental organization in special consultative status, and International Educational Development, Inc. and the World Peace Council, non-governmental organizations on the roster

The Secretary-General has received the following written statement, which is hereby circulated in accordance with Economic and Social Council resolution 1996/31.

[2 February 2018]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.18-02358(E)
1802358

Please recycle

Mosul – Rebuilding After Destruction and Bringing Accountability*

Protection of Civilians

Months after the end of the so-called "liberation" campaign conducted by Iraqi forces with the support of the international coalition that was led by the United States of America, many civilians in Mosul, Iraq are still under the threat of Iraqi Security Forces (ISF) as well as the Iraqi Federal Police. Reports allege that civilians are being indiscriminately abducted under the suspicion that they may have been with or had ties with ISIS. As well, innocent civilians who have, or had relatives associated with ISIS are also under threat.

Humanitarian Situation

The city of Mosul is in desperate need of humanitarian assistance. During the occupation of ISIS, which seized the city in 2014, innocent civilians and residents suffered a great deal as they witnessed the destruction of their city and innocent lives were subject to horrific atrocities. The Battle of Mosul, which concluded with the "liberation" of Mosul that lasted from October 2016 to July 2017, further devastated the city destroying almost the entire infrastructure including indiscriminate bombing and shelling of historical and cultural sites (most notably the Great Mosque of al-Nuri), schools, universities, hospitals, and residential areas. Furthermore, there was indiscriminate bombing and shelling of historic and cultural sites; most notably the sacred minaret.

As a result, the majority of residents and civilians lack basic facilities and necessities after shelling and bombardment in civilian areas destroyed water supplies, roads and bridges, and electricity plants among others. The damage has left thousands of civilians without clean running water, adequate shelter, or even accessible food and medicine. Additionally, thousands of displaced persons are residing in camps just outside the city or are struggling to rebuild their homes.

There is an urgent need to restore stability, security, and peace in Mosul. However, this requires serious investigation into the police and military forces. Since the invasion of Iraq, the Iraqi military and police forces have gone through considerable changes that, unfortunately, were for the most part not to the benefit or security of the Iraqi people.

Moving Forward

After the so-called US-led "liberation" campaign against ISIS in Mosul much of the city was devastated and now lies in ruins. Civilian areas that were targeted were bombarded and destroyed resulting in devastation of homes and basic civil services and facilities. For the thousands of displaced persons this means that they have no home to go to and lack the basic necessities to make a living. Moreover, corruption is leaving civilians with a complete lack of confidence in the government and unconvinced that justice and accountability will be achieved.

Already, after driving out ISIS forces from several cities mass execution of prisoners has taken place by the Iraqi authorities. This constitutes a serious and severe violation of international human rights obligations, in particular the International Covenant on Civil and Political Rights, to which Iraq has been a state party for over 40 years.[1] Such actions are counter-productive to achieving true justice and accountability.

To reiterate the recommendation by the UN High Commissioner for Human Rights, Mr. Zeid Ra'ad Al-Hussein, a special judiciary body should be established and utilized to oversee and make recommendations concerning legal

1 http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22166&LangID=E

reforms, respect for due process, fair trials, and any future trials in relation to the death penalty[2]. For this UN technical assistance will be required to carry out investigations of arbitrary killings, abductions of innocent civilians, torture, etc.

The paramilitaries, primarily the Popular Mobilization Forces (PMF) who are mostly backed by Iran, also committed grave violations under the pretext of liberating Mosul. This role, unfortunately, goes beyond Mosul as the PMF, Iran, United States and other parties involved in the campaign have already attempted to influence the social and political situation in Iraq. The Iraqi government must take the security and well-being of the people of Iraq as its paramount obligation and not contribute to sectarian violence.

While corruption within the Iraqi government continues to be rampant the current Prime Minister, Haider al-Abadi announced late last year (2017) that the next fight in Iraq will be against corruption. However, the language used and the plans and policies in place have not changed suggesting that corruption will continue as in the past[3]. Considerable changes and reforms need to be urgently implemented within the judicial and political system if the human rights of the Iraqi people are to be respected and secured.

Accountability

Resolutions on the human rights violations committed during the "liberation" campaign and accountability for war crimes are more than welcomed. However, Security Council Resolution 2379, adopted on the 21st of September 2017 against the crimes committed by ISIS in Iraq is insufficient in terms of bringing accountability for the actions of the various perpetrators and ensuring justice to the victims in Mosul. Due to the current state of the Iraqi government an independent tribunal, as stated in Resolution 2379, would not be able to cooperate with the national courts nor complement investigations that are being carried out by local authorities.

To achieve accountability, an independent international commission of inquiry is needed to bring justice to victims of grave human rights violations as well as to missing persons and their family members. Families who have submitted appeals for investigations regarding relatives claim that no such investigation has taken place even though appeals were submitted over a year ago. This clearly demonstrates that the Iraqi government does not have the full capacity to carry out exhaustive and impartial investigations through processes conforming to international norms regarding truth, justice, and reparations.

It must be emphasised that all perpetrators, and not only ISIS terrorists, should be held to account. It is now well-known that the US-led International Coalition was also responsible for massive attacks, airstrikes, shelling, and bombardment in civilian areas taking the lives and wounding thousands of innocent people and destroying their homes. Moreover, on the ground militia groups were reported for committing grave human rights abuses and various crimes including extrajudicial killings and torture.

Ensuring Justice

The involvement of the US-led International Coalition that was launched in Mosul requires their due responsibility to account for the destruction of infrastructure and suffering of civilians. They must pay redress for the devastation brought on the victims including the grave human rights violations and violations of fundamental freedoms, to which the people of Mosul are entitled to and who also have "the right to restitution, compensation and rehabilitation" as per Human Rights Resolution: 2004/34 and Human Rights Resolution: 2005/35.

The UN should provide all necessary technical assistance to facilitate the re-unification of families. According to the report by the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Ms. Agnes Callamard, entitled "End of visit statement"[4] she reported that mass graves sites are numerous all over Iraq and that at the current pace of

2 Ibid

3 http://www.aljazeera.com/indepth/opinion/2018/year-change-iraq-171228090329996.html

4 http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22166&LangID=E

exhuming and investigating the victims the procedure will take decades; a duration that is completely unacceptable for the victims' families.

Also, the relocation of displaced persons requires strategic planning for the long and short term and a reasonable and adequate budget. Many families who currently reside in camps are not able to return to their previous places of residence since they have nothing to return to as is the case with residents of Mosul, which was nearly entirely destroyed by the warring parties. Residential areas have been reduced to rubble and civilians alone cannot rebuild their torn down cities without adequate assistance from those responsible and the international community. Furthermore, truth and reconciliation should be in accordance with post-conflict obligations under International Humanitarian Law and International Human Rights Law and as Ms. Callamard expressed, the international community must "support the transitional justice process, including by providing comprehensive and impartial assistance, and by paying equal attention to international crimes, including war crimes and crimes against humanity, no matter who had committed them."5

Trust between government and civil society is key towards achieving transitional justice especially when working together. However, the scepticism of victims and others, concerning the judicial system is warranted due to the fact that there have been several instances of arbitrary killings and disappearances attributed to the ISF as well as the PMF.

The United States and Iraq should sign and ratify the Rome Statute of the International Criminal Court, which will be of assistance in prosecuting all perpetrators and providing adequate justice to the victims of human rights abuses and violations.

Recommendations:

- *Ensure* protection, confidentiality, and support to victims specifically for them to speak out and document human rights violations of all kinds. Special care must be taken to ensure the safety of women and girls who were victims of sexual violence.
- *Encourage* victims to speak up in cooperation with the judicial and legal systems accounting for the crimes committed by all perpetrators during the ISIS occupation and liberation campaigns.
- *Provide* technical assistance to help eliminate corruption within the judicial and political system of Iraq.

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*Geneva International Centre for Justice (GICJ), The Arab Lawyers Association-UK, The Brussells Tribunal, Euro-Mediterranean Human Rights Monitor, Association of Humanitarian Lawyers (AHL), The Iraqi Commission for Human Rights (ICHR), Association of Human Rights Defenders in Iraq (AHRD), General Federation of Iraqi Women (GFIW), Organisation for Justice & Democracy in Iraq (OJDI), The Iraqi Centre for Human Rights, International Anti-Occupation Network (IAON), NGOs without consultative status, also share the views expressed in this statement.

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5 http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22454&LangID=E

United Nations A/HRC/37/NGO/147

General Assembly

Distr.: General
15 February 2018

English only

Human Rights Council
Thirty-seventh session
26 February-23 March 2018
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Joint written statement* submitted by the International Organization for the Elimination of All Forms of Racial Discrimination, a non-governmental organization in special consultative status, and International Educational Development, Inc. and the World Peace Council, non-governmental organizations on the roster

The Secretary-General has received the following written statement, which is hereby circulated in accordance with Economic and Social Council resolution 1996/31.

[2 February 2018]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.18-02359(E)
1802359

Please recycle

Libya – Human Trafficking and Slavery*

The United Nations High Commissioner for Human Rights, Mr. Zeid Ra'ad Al-Hussein, on the 14th of November 2017, expressed deep dismay regarding the appalling conditions of detention facilities in Libya. Additionally, he expressed concern over the plight of African migrants detained in these facilities further noting that the detention system in Libya is "broken beyond repair".

Furthermore, on 20 November 2017, United Nations Secretary General, António Guterres spoke to reporters expressing his horror regarding news reports that showed alleged human slavery at an auction in Libya. The victims are African migrants who were captured, trafficked, and/or tricked into slavery. Mr. Guterres also called on the international community to unite in order to eliminate these crimes against humanity as they have a due responsibility and commitment to take action.

In this statement we would like to emphasise that the root causes of the human slave auctions in Libya need a serious investigation by a specialized UN mission guided by the UN Human Rights Council. Respect, dignity, and security for the human rights of African migrants en route to and under captivity in Libya must be protected.

Alternatives to detention

In order to adequately address the situation of trafficking and appropriately show concern for migrants who make their way and attempt to cross Libya, a holistic approach needs to be seriously implemented. This entails adding more focus on the factors of forced migration, particularly in the West African region, where the majority of African migrants make the journey to and across Libya. According to witness testimony of thousands of returnees (mainly from Nigeria) there is very little concern for the African migrant life as they are starved, beaten, or killed by traffickers. The detention centres, which are sometimes dungeons or auction centres, and prisons such as Giyuan, serve as confinements where horrific abuses take place. The most common adjective by captured migrants to describe the conditions and experiences is "hell". Serious investigation needs to be carried out in order to identify the owners and profiteers of such centres, trafficking, and slavery. Towards this end mutual cooperation and dialogue needs to be carried out by host, transit, and destination countries with an independent mediator from the United Nations.

Since 2011 Libya has gone into deep peril and is facing many challenges. As previously mentioned, the detention system itself is non-functional for the security and well-being of migrants. It is in this instance that the Human Rights Council and the international community have a due responsibility to provide all necessary assistance in their capacity to ensure that the human rights of migrants and people on the move is promoted and protected.

International norms and customs on slavery

The 'Slavery Convention' signed in Geneva on the 25th of September 1926, defines slavery (despite having caused controversies) in its 1st Article as:

"*... the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised*".1

It also states under Article 5 that states are, "*to take all necessary measures to prevent compulsory or forced labour from developing into conditions analogous to slavery.*"

1 It further notes in Article 1 (2): "*The slave trade includes all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves.*"

Though approximately 300 international agreements between 1819 and 1957 to suppress slavery were implemented, none has been entirely successful nor effective. Since the General Act of Brussels of 1890, signatories ensured their desire to put an end to "slavery in all its forms". The League of Nations, additionally, put in major efforts to put an end to slavery and slavery-related practices. After the Second World War the struggle to end slavery continued and finally became recognised in international law to the point that the abolition of slavery and slavery-related practices have gained '*jus cogens*' status and the practice of slavery is universally recognised and accepted by the International Court of Justice as:

a) A "war-crime" when committed by a belligerent against the nationals of another belligerent;
b) A "crime against humanity" when committed by public officials against any person irrespective of circumstances and diversity of nationality;
c) A common international crime when committed by public officials or private persons against any person.

The International Court of Justice has identified the protection against slavery as an example of "obligations *erga omnes* arising out of human rights law" and that all nations have a standing to bring offending nations before the Court of Justice.2

There has been some disagreement regarding remedial measures and strategies to eradicate slavery despite universal condemnation of the practice. Moreover, other conventions such as the International Bill of Human Rights, which consists of the Universal Declaration of Human Rights states in Article 4: "*No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms*", explicitly prohibiting slavery and ensuring the security of persons regarding labour. Such conventions also call on States parties to ensure protection against slavery, as prohibited under a number of international instruments and norms that contain legal and moral obligations for states3.

Notable responses warrant tackling root causes

The Special Procedures of the Human Rights Council including the Special Rapporteur on contemporary forms of slavery, Urmila Bhoola, Special Rapporteur on the human rights of migrants, Felipe Gonzalez-Morales, and Special Rapporteur on trafficking of persons, Maria Grazia Giammarinaro, amongst other experts on human rights issues and minorities, have strongly condemned the auctioning of African migrants in Libya and called for the immediate release of those already in captivity via a joint statement. Their statement also noted that African migrants in Libya "*are at high risk of multiple grave violations of their human rights, such as slavery, forced labour, trafficking, arbitrary and indefinite detention, exploitation and extortion, rape, torture and even being killed*".

On 21st of November 2017, the Chairperson of the African Union Commission and the President of Guinea, Professor Alpha Conde, condemned the horrific acts, called for its immediate cessation, and requested that the situation be investigated and perpetrators identified and held to account. Libya apparently opened an investigation into the situation and pledged to return those who are in captivity.

Despite many strong condemnations by relevant actors, there is much concern that such responses may amount to little action particularly by those in positions to make impactful and necessary changes to protect the victims of slavery. Concrete propositions, such as during the Security Council meeting of 21st November 2017 on 'Trafficking of persons in conflict situations', or Angela Merkel's request for a legal route to ensure security from Africa to Europe, as well as, Guenter Nooke's (Merkel's Africa envoy) suggestion concerning creating more opportunities for young Africans in

2 "Abolishing Slavery and its Contemporary Forms". United Nations New York and Geneva. 2002.

3 The International Covenant on Economic, Social and Cultural Rights (Art. 6(1), 5, 7, and 8), The International Covenant on Civil and Political Rights (Art. 4(2), 8), the Rome Statute of the International Criminal Court (Art. 7(2)(c), and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Trafficking Protocol) that supplements the United Nations Convention against Transnational Organized Crime

their countries of origin, or ensuring that perpetrators in Libya and other countries of transit have more stable political environments and secure economies are warranted for serious and urgent discussion and implementation

The Fifth African Union (AU) – European Union (EU) Summit

While there has been widespread condemnation of the human trafficking in Libya there needs to be a stronger call to tackle the root problems and ensure that conditions are never allowed anywhere for such a crime against humanity to be repeated. Countries of origin of African migrants, especially, Guinea, Senegal, Mali, Niger, Nigeria, and Gambia (Republic of The) (from which the majority of African migrants originate), must urgently and seriously consider the root economic and social causes forcing many of their citizens to embark on such a dangerous and risky route to arrive to their desired destination. In collaboration with the African Union, these countries must imperatively create opportunities for regular migration. In addition, in close cooperation with North African countries, especially Libya, security measures to ensure the safety of all migrants must immediately be put in place.

Recommendations

The **UN Human Rights Council** should:

- *Provide* all necessary technical assistance and human rights training of security forces and border patrols along migration routes to Libya and at its borders.
- *Delegate* appropriate UN mechanisms to *investigate and hold to account* the perpetrators and profiteers of the auction of African migrants as slaves in Libya.

The **African Union** and **European Union** should:

- *Organize and hold* a special session for the EU-AU-UN Task Force (established in November 2017) and all other relevant parties to address, discuss, and find solutions to the root causes of forced migration in Western and Northern Africa and to further build on creating development and stability opportunities in countries of origin and countries of transit.
- *Urgently address* the social, economic, and political situation in Libya and *assist* and *urge* the Libyan government and authorities in providing better opportunities for its citizens to secure their well-being and that of others.
- *Provide and enhance* legal, secure, and affordable documentation and transport within the continent of Africa and beyond.

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United Nations A/HRC/37/NGO/148

General Assembly

Distr.: General
15 February 2018

English only

Human Rights Council
Thirty-seventh session
26 February-23 March 2018
Agenda item 4
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[3 February 2018]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.18-02360(E)
1802360

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South Sudan – The Urgent Need to Resolve the Current Conflict*

In South Sudan the Sudan People's Liberation Army (SPLA) and the Sudan People's Liberation Army in-Opposition (SPLA-IO) remain in conflict and continue to commit grave human rights violations against innocent civilians. United Nations reports and press releases have indicated that the atrocities committed may amount to crimes against humanity as it has even been reported that humanitarian camps, including UN camps, have been under attack by soldiers who also seize humanitarian aid and at times abduct residents from the camp.

While it appears that the government is taking positive steps to alleviate the human rights violations committed, mainly by soldiers, such as the recent introduction of registering SPLA soldiers into a biometric system1, much more needs to be done to bring justice, healing and reconciliation to the victims.

Humanitarian Situation, Children, and the Future Generation

Many humanitarian workers in South Sudan have made complaints that they are unable to reach their destinations to provide humanitarian aid to victims due to confiscations or roadblocks on the ground despite receiving authorisation from the top. This non or miscommunication warrants an explanation from the government of South Sudan who must then ensure that communication will be enhanced such that humanitarian aid reaches those in need and that humanitarian workers will not fear for their lives.

Recent on the ground reports illustrate a total destruction of people's homes and villages via looting and arson. In light of these facts, serious consideration of possible and adequate relocation areas must be set-up as hundreds of former residents have no homes to go back to. Moreover, destruction to some villages also includes the destruction of their agriculture, crops, and food production further putting them in peril.2

There is serious concern for the thousands of children experiencing the conflict (some born in conflict) in South Sudan. Reports indicate that children are raped and killed and the survivors have to psychologically deal with the trauma they have witnessed first-hand. In many cases the children are too young to comprehend what is happening. These tragedies signify that the future generation of thousands of young adults will experience their youth quite possibly facing intense psychological trauma. If little to nothing is being done and if the situation of all children and youth is taken lightly then this will bring about a generation grown in suffering and deprived of an education as the system is now almost non-existent particularly for child victims and children residing in Protection of Civilians (POC) sites.3

Moreover, earlier this month (January 2018) several reports found that child soldiers were being recruited and used in a number of government forces and militias including a government funded militia that is headed by the First Vice President of South Sudan, Taban Deng Gai4. The use of child soldiers is prohibited under human rights law (under the age of 18) and international humanitarian law (under the age of 15).

Witness Testimony

According to witness testimony via a statement given to the Commission on Human Rights in South Sudan, civilians were targeted based on their skin tone as it somehow determined which ethnic group they belonged to. Survivors allege

1 http://www.eyeradio.org/spla-soldiers-registered-biometric-system/
2 http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22107&LangID=E
3 http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22545&LangID=E
4 https://messengerafrica.com/2018/01/17/south-sudans-vp-leads-militia-employing-hundreds-of-child-soldiers-report/

that this was the determining factor that SPLA soldiers took into account regarding who to kill and not to kill. This information cannot be taken lightly and any investigation concerning the perpetrators and the root causes of the current violence in South Sudan must consider this allegation.

In previous Human Rights Council Sessions, the representatives of South Sudan have claimed that there is no targeting of individuals from specific ethnic groups. If this is the case, the situation must be investigated by all means possible through a specific fact-finding mission that is capable of assessing whether the crimes and violations in South Sudan amount to genocide as defined under the Convention on the Prevention and Punishment of the Crime of Genocide (1948) and in cooperation with the Commission on Human Rights in South Sudan and the government of South Sudan. Another recurrent allegation by women of all ages claim that gang-rape by soldiers is rampant and common and that victims range from the girl child to elderly women. The testimonies allege that soldiers strategically rape wives in front of their husbands and rape mothers in front of their children in order to humiliate and break down their morale.

Witness testimony is necessary and useful for aiding to identify the crime and the perpetrator(s) and also for the victim to have a voice. However, many are fearful of reprisals, particularly from soldiers who occupy the towns and are thus silent in reporting crimes and violations. Moreover, trials are not conducted as most courts are not equipped to handle the kinds of crimes committed; therefore, perpetrators have enjoyed impunity.5 Reports claim that among soldiers and within their forces there appears to be no repercussions or punishment for their atrocities thus leaving no justice for the victims. These allegations indicate that there is a serious lack of training among the ranks of officers and soldiers and that there is not enough accountability at the highest level.

All things considered, witness testimony must be taken seriously and accounts have to be documented and investigated. Keeping a record is necessary as it may aid in accounting for crimes in the future when an adequate court is established. On Protection of Civilians (POC) sites and within refugee camps many victims tell of similar accounts regarding the atrocities inflicted on them and the human rights violations committed by soldiers; therefore, this is an indication that there is systematic abuse taking place in South Sudan.

Impunity

Impunity is a serious issue that is often highlighted with regards to immediate and urgent steps towards ending the grave atrocities on civilians in South Sudan and moving towards justice. According to the Human Rights Commission in South Sudan there is currently no access to justice for many of the human rights violations committed by soldiers of the warring parties. In addition to crimes against civilians and according to investigations and on the ground reports rapes and sexual violence, looting, abductions of women and children, cattle raids, and the burning of villages, crops, and homes constitute the array of human rights violations that are committed with complete impunity.6

The atrocities in South Sudan have increased and spread throughout the country, whereas previously they were limited to certain counties. Furthermore, the severity of atrocities has increased, particularly regarding rapes and sexual violence, as noted by witness testimony. It is assumed that these horrific assaults are to break social norms and the morale and hopes of the victims.

There are several obstacles preventing the establishment of the Truth Commission and the Compensation Authority. Security is perhaps the main obstacle but also the fact that the government of South Sudan has opted to prioritize National Dialogue instead. As long as impunity prevails the situation will worsen and the atrocities will escalate in severity and spread in numbers.

The Commission on Truth, Healing and Reconciliation & Compensation and Reparations Authority must be immediately established as it is clear that with complete impunity perpetrators will continue committing grave atrocities

5 http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22545&LangID=E
6 http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22559&LangID=E

throughout the country. Moreover, victims will not get their due justice and the much-needed reconciliation process will only be further delayed.

Conclusion and Recommendations

While reports that soldiers in South Sudan continue to commit grave human rights violations and serious crimes against civilians, it should also be noted that not all soldiers are perpetrators. The Ministry of Defence has recently implemented a biometric system for soldiers in order to fight corruption in the army and with the assistance of United Nations Mission in South Sudan's Child Protection Unit a workshop was organised to train soldiers on their responsibility to protect civilians and especially children. Such efforts need to be more widespread across South Sudan as well as encouraged by the UN Human Rights Council (HRC), the African Union, and regional partners such as the East African community. Additionally, the HRC should delegate the necessary divisions within the UN system that can provide the necessary monetary and technical assistance.

Therefore, it is recommended:

- The government of South Sudan must *commit* and *ensure* that communication and human rights training of personnel from the highest level to on the ground personnel will be enhanced.
- UN Human Rights Council *should appoint* the appropriate specific UN offices to ensure that the top authorities of the South Sudanese government receive the necessary technical and financial assistance to facilitate and enhance communication and human rights training.
- The African Union should *take a larger role* in assisting with the establishment of a hybrid court.
- Neighbours of South Sudan and the region at large, particularly the East Africa region, should *seriously* and *urgently* take the warranted and much needed action to help their neighbouring brothers and sisters in South Sudan.

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*Geneva International Centre for Justice (GICJ), The Arab Lawyers Association-UK, The Brussells Tribunal, Euro-Mediterranean Human Rights Monitor, Association of Humanitarian Lawyers (AHL), The Iraqi Commission for Human Rights (ICHR), Association of Human Rights Defenders in Iraq (AHRD), General Federation of Iraqi Women (GFIW), Organisation for Justice & Democracy in Iraq (OJDI), The Iraqi Centre for Human Rights, International Anti-Occupation Network (IAON), NGO(s) without consultative status, also share the views expressed in this statement.

United Nations A/HRC/37/NGO/149

General Assembly

Distr.: General
15 February 2018

English only

Human Rights Council
Thirty-seventh session
26 February-23 March 2018
Agenda item 5
Human rights bodies and mechanisms

Joint written statement* submitted by the International Organization for the Elimination of All Forms of Racial Discrimination, the Arab Organization for Human Rights and the Union of Arab Jurists, non-governmental organizations in special consultative status, and International Educational Development, Inc. and the World Peace Council, non-governmental organizations on the roster

The Secretary-General has received the following written statement, which is hereby circulated in accordance with Economic and Social Council resolution 1996/31.

[6 February 2018]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.18-02361(E)
1802361

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United Nations Response to Iraq's Humanitarian Crisis*

Iraq is being swept off the Earth by the hurricane of wars. The past decade is not an exception. The United States of America-led invasion in 2003 led to increased armed violence and deterioration of the situation in Iraq. Since then, the security environment in the country is deteriorating day by day. Serious widespread and systematic human rights violations are reported in the conduct of armed groups, the U.S.-led coalition forces and the Iraqi government. Sectarianism and the danger of disintegration remain. Terrorism and criminal violence have become part of daily life in many parts of the country. Furthermore, the collateral damage of the fight against the Islamic State of Iraq and the Levant (ISIL, also known as ISIS) is simply ignored. Continuous armed conflict had a negative impact on every person and every aspect of life within the Iraqi society. This statement aims to demonstrate the response of the international community to the crisis in Iraq through the United Nations and assess the impact on the ground. Hereby, we advocate for more effective UN actions to alleviate the suffering and to protect civilians.

The humanitarian crisis in Iraq remains one of the largest and most volatile in the world.1 In addition to constant airstrikes, the combat against terrorists in indiscriminate and disproportionate manner results in high death toll of civilians. Several Iraqi NGOs estimate the death of more than 2 million due to violence since the US invasion. For example, the first survey of the Lancet published in 2004, estimated 98,000 Iraqi deaths from the 2003 invasion and subsequent occupation of Iraq. The second survey of 2006 estimated 654,965 deaths related to the war, or 2.5% of the population, through the end of June 2006. The surge in violence between armed groups and government forces has resulted in over 3 million of internally displaced persons across Iraq and more than 11 million in need of humanitarian assistance.2

GRAVE BREACHES OF INTERNATIONAL LAW

Widespread and systematic crimes committed in Iraq could be qualified as international crimes by the Rome Statute of the International Criminal Court. Some of the violations of international humanitarian and human rights law in Iraq would qualify as war crimes, crimes against humanity, genocide and crimes of aggression. These horrendous violations have been committed by all parties including security and military forces, government-allied militias, coalition forces, ISIS and other non-state armed groups in Iraq. Moreover, the Iraqi government is either unwilling or unable to ensure prompt and independent investigations. The crimes committed are not adequately investigated, perpetrators enjoy impunity and victims are denied their right to remedy and reparation.

UNITED NATIONS RESPONSE

The measures undertaken by the international community through the United Nations to address the widespread and massive violations in Iraq during the past decade are widely selective and insufficient. The recent UN actions focus only on ISIS and Al-Qaida. As a result, other human rights issues of importance are neglected and overshadowed by the fight against terrorism. UN Security Council (UNSC) has issued limitless press releases and presidential statements either condemning or calling for action, reviewed situation reports, and held regular briefings on Iraq. In addition, UNSC has established the United Nations Assistance Mission for Iraq (UNAMI) and authorised the presence of the Multinational Force (MNF-I) in 2013. The Council called on member states to take all necessary measures concerning the territory under the control of ISIS to prevent terrorist acts committed by ISIS and other Al-Qaida affiliates, as well as, to address the ISIS' and Al-Nusra's illicit funding via oil exports, traffic of cultural heritage, ransom payments and external donations.

During the period of 2007-2017, UN General Assembly (GA) approved three resolutions concerning the human rights situation in Iraq with particular emphasis on violations committed by ISIL. Similarly, UN Human Rights Council (HRC) reviewed the human rights situation in Iraq once in a special session of 2014 and later in 2015 requested an urgent dispatch of a fact-finding mission, yet again to investigate ISIS violations. The High Commissioner on Human

1 2017 Humanitarian Needs Overview: Iraq, Humanitarian Response Team.
2 UN OCHA, Iraq profile at http://www.unocha.org/iraq

Rights presented several reports on Iraq to the HRC in light of abuses committed by ISIS and associated terrorist groups and violations against Yazidis. In addition, the Special Rapporteur on the human rights of internally displaced persons and the Special Rapporteur on minority issues presented their reports on missions to Iraq in 2016 and 2017 respectively.

Political solution

The efforts of the United Nations and some of the member states to find a political solution in Iraq continue without success. In 2004, UNSC authorised the mandate of UNAMI to assist and advise the Iraqi government and institutions. However, the mandate of the UN office in Iraq does not extend to closely monitoring and reporting the human rights situation on the ground. The attempts to decentralise governance and elections further deepened the sectarian divide, thus failing to lead to inter-community coherence and reconciliation. Unresolved issues contributed to the political collapse despite the withdrawal of U.S. troops. The large picture remains the same – weak and corrupt government that systematically violates human rights, full-fledged sectarian war, societal fragmentation and the ongoing potentially nonviable political resolution of the crisis.

Protection of civilians

The Iraq Humanitarian Response Team identified the protection of civilians as number one of the key humanitarian needs along with return of displaced Iraqis, health and livelihood. In 2017, the number of people in need of protection was estimated at 8.7 million out of 36 million total population of Iraq which includes: 4.2 million internally displaced persons; 1.7 million returnees; 1.4 million highly vulnerable people in conflict-affected areas; 0.3 million of residents not under government control; 0.9 million affected residents in host communities and 0.2 million of refugees.3 Given the complexity of the crisis in Iraq, 6.2 million people are left unprotected. In addition, these numbers are estimates, the reality on the ground is worse and more threatening for many.

Humanitarian access

Humanitarian pause allows civilians trapped in zones of conflict either to flee or access humanitarian aid for basics as food, water and medicine. Under international humanitarian law, all parties have the responsibility to ensure humanitarian access and safety of humanitarian workers. However, warfare rules are violated by all parties to the conflict. For example, it is reported that access is extremely limited for humanitarian workers in the Western Ninewa, predominantly under the control of the Shia Popular Mobilisation Forces (PMF).4

International contributions to the humanitarian response

Humanitarian agencies regularly report on significant shortfalls in international funding in Iraq. UNSC regularly encourages member states to provide contributions to the humanitarian response. However, the situation in reality speaks loud and clear. Corruption in the country is blooming as well as in respect to humanitarian funds. In some areas less than 10% of people in need are reached. The overall picture becomes even darker in comparison with the military expenses of the UN member states involved in the armed conflict in Iraq. As of August 2017, only 18% of the appeal for humanitarian response to the roughest conditions in the severe crisis of Iraq is covered.

RECCOMENDATIONS

- All parties to the conflict should ensure compliance with international humanitarian law, particularly on protection of civilians and civilian objects;
- UN should establish an independent investigation of the widespread and massive violations of international humanitarian and human rights law in Iraq to hold perpetrators accountable;
- UN member states should increase contributions to the humanitarian response and ensure transparent procedures;
- HRC should urgently endorse an international independent investigation into allegations that the United States committed aggression against Iraq when it invaded in March 2003;

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3 2017 Humanitarian Needs Overview: Iraq, UN OCHA, January 2017.

4 Iraq – Conflict, Forced Displacement, Humanitarian Access (DG ECHO, UN, NGOs), ECHO Daily Flash of 18 January 2017 at https://reliefweb.int/report/iraq/iraq-conflict-forced-displacement-humanitarian-access-dg-echo-un-ngos-echo-daily-flash

- UN should condemn illegal acts of aggression by member states, including the 2003 invasion and subsequent occupation of Iraq by the United States and its allies;
- UNAMI should be authorised with a broader human rights monitoring mandate and its cooperation with UN human rights bodies should be enhanced;
- The situation in Iraq should be referred to the International Criminal Court.

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*Geneva International Centre for Justice (GICJ), The Arab Lawyers Association-UK, The Brussells Tribunal, Euro-Mediterranean Human Rights Monitor, Association of Humanitarian Lawyers (AHL), The Iraqi Commission for Human Rights (ICHR), Association of Human Rights Defenders in Iraq (AHRD), General Federation of Iraqi Women (GFIW), Organisation for Justice & Democracy in Iraq (OJDI), The Iraqi Centre for Human Rights, International Anti-Occupation Network (IAON), NGOs without consultative status, also share the views expressed in this statement.

United Nations A/HRC/37/NGO/150

General Assembly

Distr.: General
15 February 2018

English only

Human Rights Council
Thirty-seventh session
26 February-23 March 2018
Agenda item 2
Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Written statement* submitted by the Jammu and Kashmir Council for Human Rights, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is hereby circulated in accordance with Economic and Social Council resolution 1996/31.

[5 February 2018]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.18-02404(E)
1802404

Please recycle

Azad Kashmir Judiciary - Rights of peoples, and of specific groups and individuals (Minority issues)

JKCHR welcomes the annual report A/HRC/37/26 of the United Nations High Commissioner for Human Rights submitted under agenda items 2 and 3, on the 25th anniversary of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. In the Declaration, adopted by the General Assembly by consensus in resolution 47/135, the Assembly stresses that the promotion and protection of the rights of persons belonging to minorities contribute to the political and social stability of the States in which they live.

In paragraph 27 "The High Commissioner for Human Rights has recalled that respect for religious diversity is threatened today in an increasing number of societies, both by the rise of violent extremists and by a wave of isolationist and nationalistic thinking. Those discourses threaten religious and ethnic minorities with increased discrimination and even violence. Over the past year, OHCHR has organised a series of meetings among faith-based and civil society actors, seeking to help them establish a respectful common ground on the essential principles of human dignity, equality and justice. In March 2017, they adopted the Beirut Declaration and its 18 commitments on "Faith for rights". It aims to foster peaceful societies, which uphold diversity of belief, behaviour and thought as an intrinsic and inalienable right of all their people".

JKCHR finds that OHCHR minorities fellowship programme that took place from 13 November to 1 December 2017, with two linguistic components (English and Russian) had 15 participation from Afghanistan, Georgia, India, Israel, Jordan, Kosovo, Kyrgyzstan, Latvia, Myanmar, Nepal, Pakistan, the Russian Federation, Spain, the Sudan, and Tajikistan. The constituency of Fellowship programme would have been more rewarding if inputs from NGOs like JKCHR had been invited in time. NGOs that have partnered with OHCHR in this fellowship programme have failed many other NGOs working for the equality and right of self-determination of people, of different faiths living in a single habitat.

Missing out on a representation from Azad Kashmir at the fellowship programme is unfortunate. The judiciary of the habitat of Pakistan administered Azad Kashmir has been offering a ray of hope in the defence of Minority rights.

Three judgements by the Supreme Court of Azad Jammu and Kashmir authored by its Chief Justice Ch. Muhammad Ibrahim Zia and Justice Raja Saeed Akram Khan in Civil Appeal Number 144 of 2014 and Chief Justice Mohammad Azam Khan and Justice Ch. Muhammad Ibrahim Zia in Civil Appeal Number 242 of 2013 and the judgement in a suo moto action taken by Chief Justice of Supreme Court Chaudhary Muhammad Ibrahim Zia on a letter from Save Sharda Committee, to protect the Sharda Peeth and the fourth decision authored by the Chief Justice of High Court Azad Jammu and Kashmir Justice M Tabassum Aftab Alvi, Justice Azhar Saleem Babar and Justice Mohammad Sheraz Kiani in Writ Petition Number 1275/2014 in regard to political rights of a 'special group' of over 3 million people designated in the Constitution of Azad Kashmir, as refugees from the disputed State of Jammu and Kashmir, and living in the various provinces of Pakistan, have advanced the scope of article 9 of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities and merit of the Declaration, adopted by the General Assembly by consensus in resolution 47/135.

It is important that OHCHR recognises the support coming for article 9 of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities and for the Declaration, adopted by the General Assembly by consensus in resolution 47/135 from the judiciary of Azad Jammu and Kashmir. The Supreme Court of Azad Jammu and Kashmir has directed its government to protect the Sharda Peeth. The Chief Justice of Azad Jammu and Kashmir Supreme Court, Chaudhary Muhammad Ibrahim Zia issued directions to the authorities to protect religious places and symbols like temples and Gurdwaras. Supreme Court Chief Justice has advised the displaced Kashmiri Pandits, seeking to restart Sharda pilgrimage, to approach the concerned authorities in Azad Kashmir and pursue the remedy.

Save Sharda Committee has been fighting for the protection of Sharda Peeth and other Hindu temples and seeking to restart Sharda pilgrimage. Sharda Peeth is 142-long and 94 6-feet wide abandoned Hindu temple located in the village of Sharda along the Neelam River in Azad Kashmir, near the Line of Control. Sharda Peeth was once a celebrated centre of learning in the subcontinent. The last Sharda pilgrimage was undertaken at the time of the partition of the subcontinent in 1947.

The abandoned temple site was heavily damaged in the October 8, 2005 earthquake. "In case failure on the part of state functionaries in carrying out of the judgements, you may approach this court for redress of your grievances (sic)," Registrar Supreme Court of 'Azad Jammu and Kashmir,' Riaz Ahmad wrote on behalf of the 'AJK' SC Chief Justice in a letter addressed to Ravinder Pandita, the founder of Save Sharda Committee, Kashmir.

Azad Jammu and Kashmir SC Chief Justice has appreciated the efforts of Save Sharda Committee, and has urged that the committee should not restrict itself only to the restoration of the Hindu temples but also focus on the protection of holy places and symbols of other religions. "The Judgement has desired that the committee shall also raise voice against worst fanatic acts like demolition of Babri Masjid in Ayodhya and the religious places of other religions especially the buildings and sacred places relating to the religion of Islam".

Save Sharda Committee had sought the intervention of the Azad Jammu and Kashmir SC Chief Justice to press the Azad Kashmir government to save the ancient Sharda temple after the Supreme Court of Pakistan passed a historic judgement on renovation of Katas Raj temple in Punjab on November 23, 2017. The committee had sought restarting of Sharda pilgrimage on the pattern of Nankana Sahib Lahore annual pilgrimage by Sikhs.

Chief Justice Supreme Court Muhammad Ibrahim Zia in his judgement in Civil appeal Number 144 of 2014 has held that, "We do not feel any hesitation in holding that according to the nature of the suit land, neither it is an evacuee land available for allotment to any person, nor, it can be used for any other purpose as it is proved from the record that the land is permanently dedicated for (temple). In this regard in the supra case, we have already issued direction for restoration of such like places to their original position".

Participants from 15 countries at the OHCHR minorities fellowship programme that took place from 13 November to 1 December 2017, would have benefitted to note that Supreme Court of Azad Jammu and Kashmir in its judgement delivered on 23 June 2015 has observed that "Therefore, it is felt advised that for maintaining the harmony among the people of different regions and maintaining the peace in the State, due protection and respect of religious places and symbols, is the duty of the State Government. Under the provisions of Section 3 of Azad Jammu and Kashmir Interim Constitution Act, 1974, Islam is the State religion which theoretically and practically is a religion of peace. The term 'Islam' grammatically means peace, protection and security. Historically, it has been undoubtedly proved that Islam has provided complete code of life which practically maintains the unprecedented peace in the society, human dignitaries and inter-religion harmony among the State Subjects. In Islam, the disgrace of other religions, dignitaries and religious symbols or places is strictly prohibited".

Human Rights Council pursuant to its resolution 31/13 will consider the annual report of the High Commissioner containing information on relevant developments of United Nations human rights bodies and mechanisms and on the activities undertaken by OHCHR that contribute to the promotion of and respect for the provisions of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (A/HRC/37/26). The consideration would be incomplete without a due acknowledgment of the important role played by the Supreme Court and High Court of Azad Jammu and Kashmir, in defending the rights of 'Minorities' and rights of 'Specific groups'.

OHCHR has to widen the scope of its constituency on Minority rights. It needs to consider inviting the two chief justices of Supreme Court and High Court of Azad Jammu and Kashmir to Geneva. Government of Pakistan could be approached to arrange meetings with them in Muzaffarabad, Azad Kashmir. Azad Kashmir Government is known to the United Nations, since it has lodged its first formal grievance at the United Nations by writing to The Chairman of the United Nations Commission for India and Pakistan on 8 July 1948 (S/AC.12/Info.3 22 July 1948). The foundations of the government and its relationship with the government of Pakistan are laid on their respective faith in UNCIP

resolutions. Human Rights Council has to assist the two governments in the promotion and protection of rights guaranteed in UNCIP resolutions and UN Security Council resolutions for all State Subjects living on either side of cease fire line and as Diaspora.

JKCHR is willing to facilitate an energised engagement between the superior judiciary of Azad Jammu and Kashmir, Government of Pakistan and OHCHR.

United Nations A/HRC/37/NGO/151

General Assembly

Distr.: General
15 February 2018

English only

Human Rights Council
Thirty-seventh session
26 February-23 March 2018
Agenda item 2
Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Written statement* submitted by the Society for Threatened Peoples, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is hereby circulated in accordance with Economic and Social Council resolution 1996/31.

[2 February 2018]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.18-02362(E)
1802362

Please recycle

Sri Lanka: Civilian Land under Military Occupation

In October 2015, the Government of Sri Lanka (GoSL) co-sponsored Resolution 30/1 on promoting reconciliation, accountability and human rights in Sri Lanka. Even though the GoSL has engaged with the Office of the UN High Commissioner for Human Rights and Special Mandate Holders, most of the commitments have not been fulfilled. With the adaption of Resolution 30/1, the GoSL committed itself to accelerate the return of land to its rightful civilian owners, end military involvement in civilian activities and support the resumption of livelihoods. This process has been painfully slow to date. In this statement, the STP will focus on the military occupation of civilian land in the Vanni within the Northern Province of Sri Lanka.

Continued Militarization

The militarization of Tamil-dominated areas in Sri Lanka continues largely unabated and remains a key obstacle to a return to regular life. The continued militarization stands in significant contrast to the government's promise of democratization and openness towards Tamil concerns. Although military checkpoints have been reduced over recent years, the armed forces remain heavily involved in public life. In this context, surveillance, harassment and intimidation of civil society, human rights activists, NGO workers and journalists are still widespread.

The militarization must moreover be seen in relation to its economic dimension. Since the end of the war, the military has established itself as a major player in the local economy. Its forces are involved in a range of commercial activities, such as agriculture, catering and tourism. These economic activities by the military deprive the local population of important sources of income. Particularly in farming, they put the security forces in direct competition with the local population for scarce resources, such as water, while it is also reported that the military sells its agricultural products below the usual market price. Local farmers cannot compete with such prices.

Occupied Land and Displacement

Even though the GoSL has started to resettle displaced families to their places of origin, the military continues to occupy vast stretches of land under the pretext of national security. As a result, a significant number of people remains unable to access their traditional land. The scale and nature of these acquisitions and expropriations of state and private land by the security forces currently beg questions concerning the complete disregard of the existing legal framework in Sri Lanka and a direct violation of people's socio-economic rights. By occupying civilian land, the military not only represses fundamental freedoms, such as the freedom of movement as people are not allowed to enter occupied areas, but also arbitrarily deprives people of, or restricts access to, their traditional livelihood as farmers and fishers.

Before their displacement, their access to land and water provided local communities with diversified and sustainable sources of income and gave them economic security. The military occupation of their traditional land has denied a large number of people access to land and water for several years, making them dependent on the support of relatives and irregular wage labour. As a result, many, especially female-headed, households are currently struggling to meet their basic needs. Meanwhile, on occupied civilian land, the military not only maintain camps, but also runs resorts and farms.

While housing schemes were provided to several displaced communities in alternate locations, this does not mean that the allocated housing and associated land were adequate compensation for the lost properties. The vast majority of displaced people were moved to permanent relocation sites without consent, while the quality of the housing given is often poor. Furthermore, some families still live in rented houses or with friends and relatives, since they have not received a house and alternate land. They continue to be dependent on the support of their host communities.

In most resettlement areas, there is not enough water or fertile land for farmers to engage in agriculture, while fishers face problems in reaching their traditional fishing grounds. In many cases, fishers' fuel costs have risen sharply, since they have to travel further to reach their fishing grounds. On occupied land, access to several beach seine sites has also been prohibited. Subsequently, the beach seine fishers have lost their traditional livelihood. The lack of basic infrastructure, such as drinking water wells and sanitary facilities, as well as restricted access to education and medical care, amplifies the situation further. Several cases of suicide have been noted as a result of vulnerable people taking on microcredit to rebuild life-essential infrastructure, but failing to pay back the debt. In addition, alternative wage-earning opportunities, in contrast to traditional forms of livelihood, remain scarce, as the local economy in the Northern

Province has not yet recovered since the end of the war. There is an ongoing lack of employment opportunities compared to the rest of the country.

Moreover, the loss of a plot of land, cultivated for generations, not only threatens the prospects for a self-determined life without hunger, but also robs people of their cultural roots and social networks. Many displaced people stress the emotional value of their lands, which were formerly cultivated and formed by their ancestors. Hence, displacement goes far beyond economic hardship, as it causes emotional and social effects that take a heavy toll on the lives of the displaced.

Released Land and Resettlement

Currently, public frustration is evident over the slow pace of progress concerning the undertakings that Sri Lanka has officially committed to. The limited changes brought in by the new government has prompted an increase in the number of protests over military occupied land. During 2017, several communities organized continuous roadside protests, firmly demanding their land back. While a few were at least partially successful, while others were placated with promises from various government officials, which were subsequently not kept.

The return of the people to their traditional land is generally viewed as a possible means to escape from poverty, as it provides an opportunity to re-establish their traditional livelihood. Yet, the communities who won back their land as a result of their protests have encountered difficulties in resettling in their place of origin. On the released land, many houses and most of the infrastructure were either damaged or destroyed by bomb attacks during the war, or later on by the military. Going back entails settling in makeshift shelters or damaged houses in overgrown villages, with hardly any support or acknowledgement from the government. In some rural areas, essential health services and schools are not available on the released land. Access to medical care and education is, therefore, difficult, especially since public transport can be inadequate as well.

There have even been incidents where the military cut down trees and destroyed houses and infrastructure a few days prior to the release of the land, wilfully turning it into a poor condition. In Puthukkudiyiruppu, in the Mullaitivu District, people returned in March 2017 to damaged houses and destroyed infrastructure as the army left behind a trail of destruction before handing over the occupied land. Soldiers had dispersed waste over the properties, ripped screws from door frames, cut electrical wires and taken sockets from the switches shortly before the release.

Conclusion

Currently, there is a significant gap between the government's rhetoric on transnational justice and the reality on the ground. Furthermore, the GoSL has failed to accelerate the return of land to its rightful civilian owners, end the military involvement in commercial activities and support the resumption of traditional livelihoods.

Recommendations

Society for Threatened Peoples calls on the GoSL:

- to ensure land rights for all displaced people by releasing all military occupied areas to the public and resettling all displaced families on their traditional land
- to compensate the affected people in the resettlement process, and provide displaced and resettled families with sufficient basic facilities, such as drinking water, electricity and sanitary facilities, and access to essential health services and education
- to immediately demilitarize the Vanni by reducing the military presence, as well as ordering the military to cease all of its commercial activities
- to ensure unrestricted access to land and water for local communities in the Vanni and support the resumption of their traditional livelihood
- to fully implement Resolution 30/1 on promoting reconciliation, accountability and human rights in Sri Lanka

Society for Threatened Peoples calls on the UN Human Rights Council (UNHRC):

- to encourage Sri Lanka to put forward a time-bound and specific implementation plan to ensure progress in the extension timespan of two years, as outlined in UNHRC Resolution 34(1) of March 2017
- to offer technical assistance and provide adequate financial support to Sri Lanka to deliver on the commitments made in 2015

Reference

- Society for Threatened Peoples, Vanni: Civilian Land under Military Occupation, February 2018.

United Nations A/HRC/37/NGO/152

General Assembly

Distr.: General
23 February 2018

English only

Human Rights Council
Thirty-seventh session
26 February-23 March 2018
Agenda item 4
Human rights situations that require the Council's attention

Written statement* submitted by Amnesty International, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is hereby circulated in accordance with Economic and Social Council resolution 1996/31.

[20 February 2018]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.18-02771(E)
1802771

Please recycle

PHILIPPINES: AMNESTY INTERNATIONAL CALLS FOR INDEPENDENT INVESTIGATION OF HUMAN RIGHTS VIOLATIONS COMMITTED IN THE CONTEXT OF THE 'WAR ON DRUGS'

Since President Duterte entered office on 30 June 2016, the Philippine government's 'war on drugs' has resulted in thousands of extrajudicial executions, with the victims overwhelmingly coming from poor and marginalised communities. Given the failure of the Philippine authorities to effectively investigate these crimes, Amnesty International calls for immediate action from the Human Rights Council ('the Council') to initiate an independent investigation in order to establish the facts, address impunity and take steps towards providing justice for victims.

Unlawful killings committed in the context of the 'War on Drugs'

Since June 2016, the Philippine National Police (PNP) and unknown armed persons – at least some of whom are believed to be linked to, and often paid by, the PNP1 – have carried out killings of thousands people suspected of using and selling drugs, including dozens of children. Human rights organisations, including Amnesty International, estimate that as many as 12,000 have been killed to date, in contrast to a figure of 4,000 cited by authorities. Amnesty believes that these killings of alleged drug offenders, which appear to be systematic, planned and organised by the authorities, meet the threshold of crimes against humanity and require immediate action by the international community.2

Over the course of the government's campaign, Amnesty International has documented extensive evidence of human rights violations, in particular extrajudicial executions. Interviews with family members and witnesses have repeatedly contested police descriptions of how people were killed. In many instances, police have tried to cover up unlawful killings by planting evidence at crime scenes and falsifying incident reports.3 Those killed have overwhelmingly been from the urban poor. Our research has also found strong evidence of links between state authorities and unidentified armed persons and under the table payments to police to kill suspects4 and that 'drug watch lists' used to identify people suspected of using and selling drugs, have acted as unsubstantiated blacklists, in violation of the right to due process.5

Following the suspension of police operations in October 2017, killings decreased, but did not stop. Meanwhile, President Duterte's hateful rhetoric has continued. As of February 2018, police have returned to full-scale operations. Amnesty International is deeply concerned that the recent resumption of these operations6, coupled with the prevailing climate of impunity and lack of accountability, will result in further extrajudicial executions.

Related human rights violations

Amnesty International research has found that the anti-drug campaign has also undermined the right to the highest attainable standard of physical and mental health, as it has rendered essential drug testing and treatment services

1 https://www.amnesty.org/en/documents/asa35/5517/2017/en/, p.34.

2 https://www.amnesty.org/en/latest/news/2017/12/philippines-icc-must-examine-war-on-drugs-crimes/.

3 https://www.amnesty.org/en/documents/asa35/5517/2017/en/, p. 21, 30.

4 Ibid, p.29.

5 Ibid, p.20.

6 https://www.amnesty.org/en/latest/news/2018/01/philippines-hold-police-to-account-for-unlawful-killings-in-war-on-drugs/.

inaccessible or risky, and forced many people who use drugs into involuntary and inadequate rehabilitation programmes.7

While neither the use nor sale of drugs is confined to poor neighbourhoods, police operations have overwhelmingly targeted the most impoverished segments of society, making the so-called 'war on drugs' a war on the poor. Family members of drug related killings often linked their loved one's use of drugs, or involvement in the drug trade, to poverty and a lack of opportunities. In many cases, deaths have removed breadwinners from families already in an economically precarious situation, pushing them deeper into poverty.

Drug-related killings have created a pervasive climate of fear in poor communities, with families of victims unable to seek justice, and many forced into hiding due to fear of further attacks.

ATTACKS AGAINST Human rights Defenders

Human rights defenders and civil society organisations have faced intimidation and obstruction in their attempts to investigate and raise concerns about the serious human rights violations being committed in the country.
In November 2016, President Duterte threatened to 'behead' and 'kill' human rights defenders that criticise the country's record.8 In August 2017, he told the police to shoot human rights activists who were 'obstructing justice,' or to charge them with conspiracy.9

In February 2017, Senator Leila de Lima, a former Secretary of Justice and former Chair of the Philippine Commission on Human Rights, was arrested on politically-motivated charges of drug trafficking. Her arrest followed a targeted campaign by President Duterte and his allies to link her to the drug trade following her outspoken criticism of the 'war on drugs', and attempts to investigate unlawful killings as Chair of the Senate Committee on Justice and Human Rights. She has been detained since, and faces between 12 years and life in prison if convicted.

Other human rights defenders and even a UN expert have also come under attack. Jose Luis 'Chito' Gascon, the current Chair of the Commission on Human Rights of the Philippines (CHR)10, and Agnes Callamard, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, have both been subjected to vicious verbal tirades and threats by the President.11

LACK OF ACCOUNTABILITY

To date, there have been no credible investigations into the widespread and systematic violations committed in the context of the 'war on drugs'. Two probes in the Senate set up to examine what is described in the Philippines as extrajudicial killings ended with accusations of whitewashing. Only a handful of police are facing charges related to anti-drug operations, in cases involving high profile killings. To date, not one police officer is known to have been convicted for offences involving human rights violations in in the anti-drug campaign.

The authorities have not only refused to investigate extrajudicial executions and prosecute those responsible for them, they have also refused access to relevant UN Special Procedures – notably the Special Rapporteur on extrajudicial, summary or arbitrary executions. The Office of the High Commissioner for Human Rights recently expressed concern that President Duterte had threatened to slap Ms. Callamard if she investigates him for alleged extrajudicial killings.12

7 https://www.amnesty.org/en/documents/asa35/5517/2017/en/, p.51.

8 https://www.amnesty.org/en/latest/news/2017/06/philippines-dutertes-bloody-and-lawless-year-in-power/.

9 https://www.rappler.com/nation/178968-duterte-probe-shoot-human-rights-advocates.

10 https://www.amnesty.org/en/documents/asa35/7566/2017/en/.

11 http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22421&LangID=E.

12 Ibid.

Of most concern, however, is the fact that the killings have been explicitly encouraged by the highest levels of government. The President has continually reassured policemen that they would not be investigated and has encouraged individuals to personally act against those involved in drugs.

Meanwhile, high-ranking government officials have denied to the international community that such violations have taken place. In May 2017, for example, the Philippine delegation to the Universal Periodic Review, led by Secretary of Foreign Affairs Alan Cayetano, defended the 'war on drugs' and claimed that no wave of killings had occurred. At the 36th session of the Council in September 2017, the government rejected all recommendations relating to its approach to drugs, including on extrajudicial executions.

On 8 February 2018, the International Criminal Court (ICC) announced that it was opening a preliminary examination into possible crimes under international law in the 'war on drugs'. Amnesty International welcomes this announcement, but believes that a UN investigation remains warranted, given that the ICC's preliminary examination will not constitute a full investigation into the situation.

RECOMMENDATIONS

In light of the above concerns, Amnesty International calls on the Council to take action to address this situation, and take steps towards ending impunity for the serious human rights violations and crimes against humanity. In the absence of independent, impartial and efficient investigations at national level, and in light of the refusal of the Philippines to allow access to the relevant Special Procedures, the Council must launch its own investigation into extrajudicial executions and other human rights violations committed in the context of anti-drug operations, as a step towards ending impunity, preventing further killings, delivering justice to victims, and ensuring reparations.

Amnesty International also calls upon members and observers of the Council to urge the Government of the Philippines to:

- Immediately order an end to all extrajudicial, summary and arbitrary executions during anti-drug operations and ensure that the police adhere to international human rights law and standards.
- End all calls encouraging, justifying or excusing violence against alleged drugs offenders, and recant previous use of such language.
- Initiate prompt, independent, impartial and effective investigations into all extrajudicial executions and ensure that all those responsible for offences involving human rights violations and abuses – including those with command and other superior responsibility – are brought to justice in fair proceedings;
- Promote a clear understanding of the complexity of drug dependence and advocate for a drug policy based on the protection of health and human rights.
- End attacks on human rights defenders, and ensure that human rights defenders, journalists and activists can carry out their work in an enabling environment and without fear of reprisals.
- Fully cooperate with the Special Procedures, as expected of a member of the Council, including by facilitating visits requested by the: Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on extreme poverty and human rights; and Special Rapporteur on the situation of human rights defenders.13

13 These are the mandates we deem to be most relevant in the context of the violations we have documented in our research on the 'war on drugs.'

United Nations A/HRC/37/NGO/153

General Assembly

Distr.: General
15 February 2018

English only

Human Rights Council
Thirty-seventh session
26 February-23 March 2018
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by Prahar, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is hereby circulated in accordance with Economic and Social Council resolution 1996/31

[1 February 2018]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.18-02368(E)
1802368

Please recycle

Justice delayed is Justice denied- the myth became truth in India.

Indigenous people have rich and diverse heritages, language, cultures and knowledge built upon their relationships with each other, their ecologies and their links to time and space.
Indigenous peoples are the sons of soil. Total population of the world around 300 million people are recognized as the indigenous people and 70% of this total population of the indigenous people are live in Asia continent. All over the world Human rights are rights to certain claims and freedoms for all human beings. But history shows that human rights of indigenous people are condemned in almost all societies.

Indigenous people of North East India especially Assam has been facing continuous discrimination whether from Land and political rights, natural Resources to their basic needs. The situation has become so worse that these people have searching their own identity in their own birthplace.

Illegal Migration is one of the most controversial and crucial issues in the current debate on socio economic and political policies in many countries of destination. North-eastern states especially Assam is also not lacking behind.

A well known movement of Assam history was the "Assam Movement" which was held in the year 1979 to 1985 to expel of illegal migrants from Assam in the basis of 1951 as the base year for citizen of India. But unfortunately after the movement the Assam Accord was signed between Government and AASU (All Assam Student's Union) seeking the "**Cut of Year**" of expel of Illegal foreigners from Assam is 1971 whether it is 1951 for all other parts of India. That means, Assam has been bearing the load of Illegal migrants of these extra 20years alone. The migrants who are Illegal as per the Assam Accord have remained in Assam and numbers have multiply along with their descendants.

How Students' representatives could take such a crucial decision about the future of Assamese people? How students' can become guardian of a state and a community? If cut off year of citizenship for all other states of India is 1951 then why 1971 has been set for Assam? Why always separate constitutional provisions for Assam?

In 1998, the Governor of Assam Mr. S.K Sinha has reported to the central govt. informing the burning situation of Assam affected by illegal migration.
After the independents of India to till now, numbers of acts has been enacted by the Indian Government for Assam to abate aliens' viz. Foreigners Acts 1946, The Immigration (Expulsion from Assam) Act, 1950, Illegal Migration(Determination by Tribunal) Act, 1983 etc. According to data, population of Assam increased 1971 to 1991 @52.44%and the dark shadow of Illegal migration seemed to swallow the future of Assamese people.

Already Assam government published the updated draft report of National Registrar of Citizen as the base year 1971. Whereas in the Supreme Court of India, cases in support of seeking 1951 as the base year is still going on. Surprisingly, according to Supreme Court order Assam government has processed for issuing NRC draft report. We are amazed with this double edged situation of the Supreme Court of India. Recently, an unusual incident shocked the whole world. Four Supreme Court Judges of India has rebelled against the Chief Justice of Supreme Court and Indian Judicial system. According to these judges "Without an independent judiciary, democracy is under threat". If Indian judicial system has been reaching to this critical stage then how common people maintain their faith on judiciary?

The large scale migration has significantly changed the demographic scenario in Assam and became the leading cause to social, economic and political instability in Assam. In this regard, we would like to inform this Council that indigenous people of Tripura have already became minority because of illegal foreigners.

A committee has been constituted on 2017 by the Assam Government for protection of land rights of indigenous persons of the State with former Chief Election Commissioner Hari Sankar
Brahma as its chairman. It can be imagine the situation in Assam for indigenous people is became so worse that they now have to prove themselves if they are indigenous or not. They are losing their rights in their own birthplace. This committee found that 90% of indigenous people of Assam didn't have their own land records. What a shame!

The Assam Land and Revenue act which was enacted on British colonial period i. e 1886 where the other states has been enjoying their land rights with their new and updated Land Revenue Acts.

From the post-colonial i. e 1826 era to till now the indigenous tribes of Northeast especially Assam has been facing tremendous movements whether is for safeguard of language or expel of illegal migration. Food, Cloth and Shelter- these are the basic needs of human beings. But these native groups have been consistently deprived in fulfilling their basic needs as they have been suffering all the time through imbalance. Their lives are passing through volcano like situations.

We are depriving from Government, from Judiciary even from the United Nations as we have been consistently raising our voice for safeguarding the human rights of our indigenous people and against these discrimination. Since 2015 to till today we have been continuously informing to the Human Rights Council about these crucial situation of North East specially Assam. But till now we did not get justice for our people. We can't proceed to the International Court of Justice as these issues are not involved in their jurisdiction. **"Justice delayed is Justice denied"**- this old saying has became as the cruel truth for the indigenous people North East India.

Many international laws and acts like United Nations Declaration on the Rights of Indigenous People (2007), International Labour Organization Convention No 169 on Indigenous and Tribal Peoples (1989) has been even can't be able to protect the rights of Indigenous people in North East. Indian government should evaluate these acts and their own constitutional provisions for protection of rights of Indigenous people.

The culture, heritage and ethnicity, language, traditions and customs of these indigenous groups are in threat. Therefore, we are requesting to this esteemed council and its affiliated treaty bodies to guide Indian Government to take adequate actions as soon as possible for protecting and safeguarding the human rights of the indigenous people of North East India.

United Nations A/HRC/37/NGO/154

General Assembly

Distr.: General
15 February 2018

English only

Human Rights Council
Thirty-seventh session
26 February-23 March 2018
Agenda item 4
Human rights situations that require the Council's attention

Written statement* submitted by ODHIKAR – Coalition for Human Rights, a non-governmental organization in special consultative status

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[1 February 2018]

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GE.18-02369(E)
1802369

Please recycle

BANGLADESH: Human Rights Council should take initiative to make the Bangladesh Government accountable for enforced disappearances and accede to the Convention on Enforced Disappearance

The commission of enforced disappearances has dramatically increased in Bangladesh in recent years and government authorities have been unwillingness to investigate such cases. According to information gathered by Odhikar, at least 414[1] individuals were subjected to enforced disappearance[2] by various law enforcement agencies between 2009 and 2017. In 2013, before the 10th parliamentary elections held in January 2014, cases of disappearances rose and many opposition leaders and dissident voices[3] became targets of enforced disappearances. The next parliamentary elections are scheduled for the end of 2018. There are fears that incidents of enforced disappearance will take place ahead of the upcoming elections and the human rights situation will deteriorate further amid increasing violence and ongoing impunity. Under the current administration, enforced disappearances have been used to targeted political opponents and silence dissenting voices. The families of the disappeared and witnesses have repeatedly claimed that members of law enforcement agencies, or men claiming to be from such agencies, arrested and took away the victims and the authorities have denied taking them. Statements of many witnesses in this regard reveal that members of law enforcement agencies have been involved in enforced disappearances.

Law enforcement agencies often initially deny alleged abductions and after days or months the police or security forces then produce abductees before the media as suspects in a criminal investigation or as those charged with a crime. In cases where bodies of victims are recovered, the police often attribute such deaths to 'crossfire', 'gunfire' or 'encounters'. Alternatively, abductees are falsely categorized as having been convicted and sentenced to imprisonment by the courts. Only two cases of enforced disappearances have been investigated in Bangladesh since 2009.[4] In one case, the perpetrators were prosecuted and found guilty of the disappearance and the killing of seven men in 2014.5 In

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[1] Among them, 54 were found dead, 228 were released after being left blindfolded at a particular location or shown as arrested or produced before a court after several days or months following their disappearance. The fate or whereabouts of 132 persons remained unknown.

[2] Odhikar only documented the enforced disappearance cases where the families of the disappeared claim that members of law enforcement agencies allegedly picked up the victims.

[3] 'We Don't Have Him, Secret Detentions and Enforced Disappearances in Bangladesh', Human Rights Watch, please see https://www.hrw.org/sites/default/files/report_pdf/bangladesh0717_web.pdf

[4] On 16 January 2017, Narayanganj District and Sessions Judge Syed Enayet Hossain found 35 individuals, including 25 members of the police special force Rapid Action Battalion (RAB)-11, to be responsible for the disappearance and murder of seven men on 27 April 2014. In the judgment, 26 accused, including 16 RAB officers and members, were sentenced to death. On 22 August 2017, the High Court Division of the Supreme Court upheld the death penalty of 15 of the RAB officers and members. On August 4, 2016 at around 9.30 pm, Sub-Inspector (SI) Himel of Satkhira Sadar Police Station arrested Sheikh Mokhlesur Rahman, aka. Johny, and took him to the Police Station from the Rabony Cinema Hall intersection of the town where he had gone to buy medicine for his father. On 5-7 August 2016, the family members of Johny provided food to him at the police station custody cell and also talked to him. They also spoke to the then-Officer-in-Charge of the Police Station Emdadul Huq and SI Himel regarding Johny. The police informed them that Johny had involvement with 'Islamic extremists' and demanded a huge amount of money for his release. On 8 August 2016, the family did not find Johny at the police station and the police refused to inform them of his whereabouts. Later the family filed a case in this regard. On 4 July 2017, a Senior Judicial Magistrate of Satkhira, Habibullah Mahmud submitted an inquiry report to the High Court Division of the Supreme Court that found three high-ranking police officials to be involved in the arrest of homeopathic physician Sheikh Mokhlesur Rahman, aka Johny, and his subsequent enforced disappearance.

[5] 'Death for 15, life term for 11: *HC revises lower court verdict in sensational 7-murder case, upholds death penalty for 15 including expelled Narayanganj AL leader Nur Hossain, 3 ex-Rab officers*', *The Daily Star, 23 August 2017*; http://www.thedailystar.net/frontpage/narayanganj-7-murder-verdict-high-court-bangladesh-death-reference-appeal-death-15-life-term-11-1452607

another case, a judicial probe showed that members of law enforcement agencies were involved in the enforced disappearance of a doctor, but none of the perpetrators were prosecuted.6

Furthermore, many victims and families of the victims are being regularly harassed and threatened by ruling party activists and law enforcement agencies. Families of the disappeared rarely hold press conferences or talk about disappearances due to constant threats and surveillance by the law enforcement personnel. Police officers are reluctant to register a complaint against their colleagues or other members of law enforcement agencies. The police insist that the complainants should exclude law enforcement agencies' name and that the allegation of disappearance should be changed to 'kidnapping by unidentified criminals'. The investigation of the few cases that were investigated in the past nine years, have not seen any progress. Writs of Habeas Corpus filed by families often end up as futile litigation, as the Attorney General's Office defends the alleged perpetrators of the law-enforcement agencies before the High Court. The failure of the judiciary to effectively respond leaves victims without recourse to judicial remedies or justice.

In many cases, instead of conducting prompt and thorough investigations, the authorities have repeatedly denied that incidents of enforced disappearance occur and have claimed that the victims were either kidnapped or had gone into hiding. For example, the Bangladeshi Home Minister claimed that many allegations of businessmen who disappeared were cases in which they had voluntarily gone into hiding after failing to repay their loans. He also asserted that some disappearances were actually cases of people going into hiding following extramarital relationships.7 On 23 November 2017, Prime Minister Sheikh Hasina told Parliament that the disappearance of people is a common phenomenon not only in Bangladesh, but also in developed countries like the US and the UK.8

Since August 2017, a new trend has emerged in which numerous individuals including a university teacher, a politician, a former ambassador, a businessman, a journalist and a few students mysteriously went 'missing'. Some of them resurfaced and some of them were shown as arrested. Some victims, after their return, gave statements to the media. Their accounts contained many similarities and even their detention experience was almost the same.9 During this period, those who resurfaced after abduction have also reported that their abductors were well-organised and had the necessary resources to make victims disappear. Some members of law enforcement agencies were allegedly involved in these incidents. Such assumptions became stronger when a high-ranking police officer spoke directly on this matter. On 14 December 2017, Deputy Commissioner of Dhaka Metropolitan Police Biplob Kumar Sarkar admitted that police picked up people but could not admit to doing so due to strategic reasons. He also mentioned the incident of the disappearance of doctor Shamim Khan10 who was abducted on January 1, 2016, and was found unconscious after 30 hours.11

The UN Human Rights Council should make the following recommendations to Bangladesh:

i. Ensure the independence of the Judiciary and create an independent Judicial Probe Commission for investigating the allegations of enforced disappearances leading to prosecution of all the cases of disappearances;

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6 'Cops involved with arrest, disappearance of Satkhira physician: judicial report', New Age, 09 July 2017, http://www.newagebd.net/article/19321/

7 'No, Bangladesh, The Truth is Not a 'Smear Campaign', Instead of Investigating, Authorities Reject Report of Enforced Disappearances', by Meenakshi Ganguly, South Asia Director of HRW, https://www.hrw.org/news/2017/07/07/no-bangladesh-truth-not-smear-campaign

8 'People disappear not only in Bangladesh, but also in US, UK', The daily Dhaka Tribune, 24/11/2017, http://www.dhakatribune.com/bangladesh/2017/11/24/people-disappear-not-bangladesh-also-us-uk/

9 'Mubashar, Utpal return, but what of the abductors', the daily Prothom Alo, 23/12/2017, http://en.prothomalo.com/opinion/news/168406/Mobashar-Utpal-return-but-what-of-the-abductors

10 Dr. Shamim Khan was picked up by law enforcement agency on the allegation of sheltering two accused who were involved in bomb blast in a mosque at a naval outpost in Chittagong.

11 'Police officer says they cannot reveal all about anti-terror operations', bdnews24.com, 14/12/2017, https://bdnews24.com/bangladesh/2017/12/14/police-officer-says-they-cannot-reveal-all-about-anti-terror-operations

ii. Accede to the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED) and criminalize enforced disappearance under domestic law;

iii. Take necessary measure to effectively hold perpetrators of enforced disappearances accountable through impartial investigation into allegations of such crimes and ensure access to justice to victims of enforced disappearances;

iv. Issue an invitation to the UN Working Group on Enforced or Involuntary Disappearances (WGEID) for a country visit.

United Nations A/HRC/37/NGO/155

General Assembly

Distr.: General
15 February 2018

English only

Human Rights Council
Thirty-seventh session
26 February-23 March 2018
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[1 February 2018]

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GE.18-02370(E)
1802370

Please recycle

BANGLADESH: Failing to Fulfil its Obligations under the UN Convention against Torture

Torture and other cruel, inhuman or degrading treatment perpetrated by the law enforcement agencies are widespread in Bangladesh. Apart from leaders-activists of the opposition political parties, people from all walks of life were tortured and became victims of inhuman or degrading treatment. The actual number of incidents of torture are probably much more than what is documented, as most of the survivors and victim-families do not speak of the incident in public due to fear of reprisals and further harassment.

Torture is inflicted to humiliate a person and as an exercise to show power and also to elaborate investigation. Law enforcement agencies firmly believe security and law and order cannot be maintained without such treatment. Thus, torture is carried out when suspects are picked up by police and taken into custody. When the suspects are taken into remand for further questioning, torture is routine. The members of law enforcement agencies are allegedly involved in extortion or taking bribe from the ordinary people by threatening them with torture.

On 10 November 2016 the Appellate Division of the Supreme Court issued a 19-point guideline to judicial and law-enforcement officials regarding arrests without warrant and the procedure of remand.1 Such guideline is not implemented either. Torture has been criminalised in Bangladesh through the enactment of the Torture and Custodial Death (Prevention) Act2 on October 24, 2013. Despite this, there is an environment of fear to file cases against the alleged perpetrators due to an endemic practise of torture. The Committee on the Civil and Political Rights noted in its 119th session that there are currently no ongoing investigations into cases of torture accordingly information submitted by Bangladesh government.3 It shows the culture of impunity practiced by the state to protect alleged perpetrators. Regrettably, police have demanded recently to repeal the anti-torture law that prohibits both mental and physical torture in custody by law enforcement agencies, during the Police Welfare Parade to the Prime Minister at Rajarbagh Police Lines on 23 January 2018.4 In 2015, police also proposed to repeal section 125 of the said law.6

Odhikar data shows that 120 persons were allegedly tortured to death by members law enforcement authorities between 2009 and 2017. Detainees subjected to torture in custody often die as a result of deprivation of adequate medical treatment. According to Odhikar documentation, from January 2009 to December 2017, at least 564 individuals have died in jail due to the lack of medical treatment and negligence by the prison authorities.

Victims of torture and their families are under constant threat by the members of law enforcement agencies (LEAs) if they file cases against them. Sometimes LEAs offered money to victim-families to withdraw the case. As for example,

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[1] Prothom Alo, *Reform of Cr.PC Provisions of Arrest, What 19 SC guidelines for law enforcers stipulate*, 10 November 2016

[2] http://www.humanrights.asia/countries/bangladesh/countries/bangladesh/laws/legislation/Torture-CustodialDeath-ActNo50of2013-English.pdf/view

[3] http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fBGD%2fCO%2f1&Lang=en

[4] The Daily Star, 24/01/2018, please visit the link http://www.thedailystar.net/frontpage/police-want-law-against-custodial-torture-scrapped-1349926 and The daily New Age, 24/01/2017, please visit the link http://www.newagebd.net/article/7666/police-want-revocation-of-anti-torture-law

[5] Section 12 of the said Act states that , "War or other contingencies unacceptable as excuse:
(1) Any act constituting an offence under this Act was committed - at a time when there was a state of war, threat of war, internal political instability or any public emergency; or on an order of a superior officer or a public authority; shall be unacceptable as an excuse."

[6] Ibid

on 6 January 2018 Mohammad Zakir Hossain, father of torture victim Shahjalal[7] alleged that he was offered 7,00,000[8] TK by the Officer –in-Charge (OC) of Khalishpur Police Station Nasim Khan to withdraw the case. As he refused to take the amount, police gave him threat for further violence to his son.[9] On 15 January 2018 Inspector Bablur Rahman Khan of the Police Bureau of Investigation (PBI) Khulna submitted the probe report to a Khulna Metropolitan Sessions Court where it did not find any evidence of police gouging Shahjalal's eyes out. The court will hear the case on 15 February 2018.[10]

In another incident, on the night of 21 September 2017, a group of criminals came to the house of Bazlur Rahman (brother of Saidur Rahman and the plaintiff in his murder case[11]) on motorbikes and vandalised his house and threatened him of dire consequences if he did not withdraw the complaint by 24 September 2017. Saidur Rahman was allegedly tortured to death by the members of Satkhira Police Station.[12]

The practice of shooting in the limbs of detainees/accused persons has been highlighted as a new trend of police brutality since 2013. Reports show that before and after the 10th Parliamentary elections several people, particularly activists of opposition political parties became victims of kneecapping.[13] Police shot human rights defender and journalist, Afzal Hossain, in the leg while he was observing local government polls in Bhola district on March 31, 2016.[14] There are fears among the people that arrests and incidents of torture will rise as the date of the 11th Parliamentary elections nears.

The Government of Bangladesh has to take a political position to stop torture and to prosecute perpetrators. Bangladesh fails in its obligations under the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or

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[7] According to the case filed by Shahjalal's mother Renu Begum, Shahjalal was picked up by the police on the night of 18 July 2017 when he went out to buy milk for his daughter. When his family went to the police station, OC Nasim demanded Tk1.5 lakh to release him. Shahjalal's family failed to meet the demand, resulting in the police taking Shahjalal out for a ride. He was found the next day at Khulna Medical College Hospital with both his eyes gouged out.

[8] 700000 TK = 8400 USD

[9] The Daily Dhaka Tribune, 17.01.2018, please visit the link http://www.dhakatribune.com/bangladesh/crime/2018/01/17/pbi-evidence-police-gouging-shahjalal

[10] Odhikar gathered information and The Daily Dhaka Tribune, 17.01.2018, please visit the link http://www.dhakatribune.com/bangladesh/crime/2018/01/17/pbi-evidence-police-gouging-shahjalal

[11] On 14 September 2017 at around 1.30 am, a police team of Satkhira Police Station led by Sub-Inspector (SI) Asaduzzaman arrested Maulana Saidur Rahman, Superintendent of Hothatganj Madrassa in Kolaroa under two cases relating to vandalism. Saidur Rahman's brother Rafiqul Islam alleged that on 15 September his brother became unconscious due to the repeated torture in custody. When he was taken to Satkhira Court, the Court, observing his physical condition, refused to hear the police and sent him [illegible] for the hospital and when his condition improved he was produced before the Court again and the Court ordered that he be sent to jail. Superintendent of Satkhira District Jail, Hafizur Rahman informed that Saidur Rahman was admitted to Satkhira Sadar Hospital. Dr. Farhad Zamil, Residential Medical Officer of Satkhira Sadar Hospital, informed that Saidur Rahman died at midnight on 16 September. Marks of injuries were found on his body. On 19 September Saidur Rahman's brother Bozlur Rahman filed a case under section 302 of the Penal Code with Satkhira Sadar Cognisable Court-1, accusing Sub-Inspector Paik Debvar Hossain, ASI Sheikh Sumon Hassan, ASI Ashrafuzzaman and two unknown constables of Satkhira Police Station.

[12] The daily Jugantor, 23.09.2017, please visit the link https://www.jugantor.com/news/2017/09/23/157742/ and Monthly Human Rights Reports of September, 2017 of Odhikar, page- 12, for details please visit the link www.odhikar.org/wp-content/uploads/2018/01/human-rights-monitoring-report-September-2017_Eng.pdf

[13] Human Rights Watch, *"No Right to Live" – "Kneecapping" and Maiming of Detainees by Bangladesh Security Forces*, 29 September 2016, https://www.hrw.org/report/2016/09/29/no-right-live/kneecapping-and-maiming-detainees-bangladesh-security-forces

[14] "BANGLADESH: Call for justice after another police shooting of a human rights defender", Press release by FIDH, AHRC and Odhikar, please visit the link https://www.fidh.org/en/issues/human-rights-defenders/bangladesh-call-for-justice-after-another-police-shooting-of-a-human

Punishment. Given the fact that torture and impunity have become a permanent feature in the practice of criminal investigation, Bangladesh has not submitted any initial report yet to the Committee Against Torture since the ratification of the Convention in 1998.

Recommendations:

Odhikar call for the UN Human Rights Council to:

I. Urge the Government of Bangladesh to ensure human rights and rule of law. Torture and Custodial Death (Prevention) Act 2013 needs to be implemented and legal action be taken against the perpetrators.

II. Urge the Government of Bangladesh to bring the alleged members of the law enforcement agencies to justice.

III. Urge the Government of Bangladesh to accede to the Optional Protocol to the Convention against Torture.

IV. Urge the Government to follow the recommendations made by the UN Human Rights Committee in its 119th session to end torture.

V. The law enforcement agencies must also follow international guidelines "Basic Principles on the use of Force and Firearms by Law Enforcement Officials" and the "UN Code of Conduct for Law Enforcement Officials".

VI. Urge the Government of Bangladesh to recognize the competence of the Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to receive and consider individual complaints of torture or other breaches of obligations under the Convention.

VII. Urge the Government of Bangladesh to submit its report to the Committee Against Torture.